

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Leonard Green  
Clerk

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Filed: August 14, 2009

Mr. Philip A. Brown

Ms. Alycia N. Broz

Mr. Matthew L. Fornshell

Mr. Jacob A. Goldberg

Mr. Jay B. Kasner

Mr. John Cooper McDonald

Ms. Jamie R. Mogil

Mr. Roger P. Sugarman

Re: Case No. 09-3443, *The Booth Family Trust, et al v. Michael Jeffries, et al*  
Originating Case No. : 05-00860 : 05-00819 : 05-00964 : 05-00998 : 05-01084

Dear Counsel:

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Benjamin P. Alexander  
Case Manager  
Direct Dial No. 513-564-7021  
Fax No. 513-564-7098

cc: Mr. James Bonini

Enclosure

No. 09-3443

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Aug 14, 2009  
LEONARD GREEN, Clerk

THE BOOTH FAMILY TRUST, Charles )  
Federman, Trustee, Derivatively on Behalf of )  
Nominal Defendant, Abercrombie & Fitch; )  
ALFRED FREED, )

Plaintiffs-Appellants, )

v. )

O R D E R

MICHAEL S. JEFFRIES; ROBERT S. SINGER; )  
RUSSELL M. GERTMENIAN; ARCHIE M. )  
GRIFFIN; JAMES B. BACHMANN; LAUREN J. )  
BRISKY; JOHN W. KESSLER; JOHN A. )  
GOLDEN; EDWARD F. LIMATO; SAMUEL N. )  
SHAHID, JR.; ALLAN A. TUTTLE, )

Defendants-Appellees, )

ABERCROMBIE & FITCH CO., )

Defendant-Appellee. )

The plaintiffs in this consolidated shareholder derivative action brought suit on behalf of and against the nominal defendant, Abercrombie & Fitch Co. (“Abercrombie”). In response to the suit, Abercrombie’s Board of Directors created a Special Litigation Committee (“SLC”) to investigate that plaintiffs’ claims. The SLC, in turn, produced a report, supported by exhibits. Based upon the SLC’s conclusion that there was no evidence to support the plaintiffs’ claims, it directed Abercrombie to seek dismissal of the complaint.

Abercrombie moved to dismiss the plaintiffs’ complaint. The district court, on Abercrombie’s motion, sealed the motion to dismiss, the SLC report, and subsequent pleadings, memoranda, and discovery related to the motion to dismiss. Thereafter, the district court granted Abercrombie’s motion and dismissed the derivative action. The plaintiffs appealed.

No. 09-3443

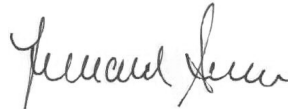
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The parties now jointly move to seal the briefs and appendices on appeal. The references the plaintiffs-appellants make in their 76-page brief to the sealed documents are limited in number and largely general in nature. The defendants have not yet filed briefs. Documents filed in this court generally must be made available to the public. *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996); *see also* 6th Cir. R. 28(g). The parties have not demonstrated that their entire briefs contain information required to be sealed or that they contain any truly confidential material that must be protected from disclosure to the public. Moreover, although it referred to sealed documents, the district court did not seal its opinion and order granting Abercrombie's motion to dismiss.

Documents filed under seal in the district court, however, "shall continue to be filed under seal on appeal to this court." 6th Cir. R. 25(j)(2). To the extent the appendix contains documents that were filed under seal before the district court, those documents may remain under seal before this court.

The motion is **GRANTED IN PART** and **DENIED IN PART**. The parties shall submit a multi-volume appendix. The documents that were sealed before the district court shall be contained in a separate volume of the appendix and placed under seal. The parties' briefs shall be docketed in the usual course of business and not placed under seal. This order does not prevent a party from further moving to have a specific portion of a brief sealed. *See* 6th Cir. R. 28(g).

ENTERED BY ORDER OF THE COURT



Leonard Green  
Clerk